

State of California
BOARD OF EQUALIZATION
SALES AND USE TAX REGULATIONS

Regulation 1684. COLLECTION OF USE TAX BY RETAILERS.

Reference: Sections 6203, 6204, 6226 and 7051.3, Revenue and Taxation Code.
Section 513(d)(3)(A), Internal Revenue Code (26 USC).

(a) RETAILERS ENGAGED IN BUSINESS IN STATE. Retailers engaged in business in this state as defined in Section 6203 of the Revenue and Taxation Code and making sales of tangible personal property, the storage, use, or other consumption of which is subject to the tax must register with the Board and, at the time of making the sales, or, if the storage, use or other consumption of the tangible personal property is not then taxable, at the time it becomes taxable, collect the tax from the purchaser and give the purchaser a receipt therefor.

Any retailer deriving rentals from a lease of tangible personal property situated in this state is a "retailer engaged in business in this state" and is required to collect the tax at the time rentals are paid by his lessee.

The use of a computer server on the Internet to create or maintain a World Wide Web page or site by an out-of-state retailer will not be considered a factor in determining whether the retailer has a substantial nexus with California. No Internet Service Provider, On-line Service Provider, internetwork communication service provider, or other Internet access service provider, or World Wide Web hosting services shall be deemed the agent or representative of any out-of-state retailer as a result of the service provider maintaining or taking orders via a web page or site on a computer server that is physically located in this state.

A retailer is not "engaged in business in this state" based solely on its use of a representative or independent contractor in this state for purposes of performing warranty or repair services with respect to tangible personal property sold by the retailer, provided that the ultimate ownership of the representative or independent contractor so used and the retailer is not substantially similar. For purposes of this paragraph, "ultimate owner" means a stock holder, bond holder, partner, or other person holding an ownership interest.

(b) CONVENTION AND TRADE SHOW ACTIVITIES. For purposes of this subdivision, the term "convention and trade show activity" means any activity of a kind traditionally conducted at conventions, annual meetings, or trade shows, including, but not limited to, any activity one of the purposes of which is to attract persons in an industry generally (without regard to membership in the sponsoring organization) as well as members of the public to the show for the purpose of displaying industry products or to stimulate interest in, and demand for, industry products or services, or to educate persons engaged in the industry in the development of new products and services or new rules and regulations affecting the industry.

Except as provided in this paragraph, a retailer is not "engaged in business in this state" based solely on the retailer's convention and trade show activities provided that:

(1) For the period commencing on January 1, 1998 and ending on December 31, 2000, the retailer, including any of his or her representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than seven days, in whole or in part, in this state during any 12-month period and did not derive more than ten thousand dollars (\$10,000) of gross income from those activities in this state during the prior calendar year;

(2) For the period commencing on January 1, 2001, the retailer, including any of his or her representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than fifteen days, in whole or in part, in this state during any 12-month period and did not derive more than one hundred thousand dollars (\$100,000) of net income from those activities in this state during the prior calendar year.

A retailer coming within the provisions of this subdivision is, however, "engaged in business in this state," and is liable for collection of the applicable use tax, with respect to any sale of tangible personal property occurring at the retailer's convention and trade show activities and with respect to any sale of tangible personal property made pursuant to an order taken at or during those convention and trade show activities.

Regulation 1684. (Continued)

(c) RETAILERS NOT ENGAGED IN BUSINESS IN STATE. Retailers who are not engaged in business in this state may apply for a Certificate of Registration – Use Tax. Holders of such certificates are required to collect tax from purchasers, give receipts therefor, and pay the tax to the Board in the same manner as retailers engaged in business in this state. As used in the regulation, the term “Certificate of Registration – Use Tax” shall include Certificates of Authority to Collect Use Tax issued prior to September 11, 1957.

(d) USE TAX DIRECT PAYMENT PERMIT EXEMPTION CERTIFICATES. Notwithstanding subdivisions (a) and (b), a retailer who takes a use tax direct payment exemption certificate in good faith from a person holding a use tax direct payment permit is relieved from the duty of collecting use tax from the issuer on the sale for which the certificate is issued. Such certificate must comply with the requirements of Regulation 1699.6, Use Tax Direct Payment Permits.

(e) TAX AS DEBT. The tax required to be collected by the retailer and any amount unreturned to the customer which is not tax but was collected from the customer under the representation that it was tax constitute debts owed by the retailer to the state.

(f) REFUNDS OF EXCESS COLLECTIONS. Whenever the Board ascertains that a retailer has collected use tax from a customer in excess of the amount required to be collected or has collected from a customer an amount which was not tax but was represented by the retailer to the customer as being use tax, no refund of such amount shall be made to the retailer even though the retailer has paid the amounts so collected to the state. Section 6901 of the Revenue and Taxation Code requires that any overpayment of use tax be credited or refunded only to the purchaser who made the overpayment.

History: Adopted August 7, 1957, as restatement of previous ruling, effective September 11, 1957.

Amended August 2, 1965, applicable on and after August 1, 1965.

Amended October 8, 1968.

Amended and renumbered November 3, 1969, effective December 5, 1969.

Amended July 27, 1988, effective November 11, 1988. In subdivision (a), included reference to section 6203 of the Revenue and Taxation Code which defines a “retailer engaged in business in this state.”

Amended September 10, 1997, effective November 27, 1997. New third and fourth paragraphs added to subdivision (a).

Adopted September 1, 1999, effective October 5, 1999. Added new un-numbered fifth paragraph to subdivision (a) for provisions of section 6203(e) (Statutes of 1997, Chapter 621) concerning trade show and convention activities by out-of-state retailers. Also added new subdivision (c) for provisions of section 7051.3 (Statutes of 1997, Chapter 702 (SB-110)) concerning exemption certificates for use tax direct pay permits. Relettered old subdivision (c) to (d) and (d) to (e).

Amended May 31, 2001, effective August 1, 2001. New subdivision (b) added. Language “For . . . industry.” added. Language of former fourth unnumbered paragraph of the regulation incorporated as new subdivision (b)(1) and phrase “For . . . 2000,” added. New subdivision (b)(2) added. Ensuing subdivisions redesignated accordingly.

Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.